

Wisconsin Chronic Disease Program (WCDP)

Estate Recovery Program

Here are some questions and answers about the Estate Recovery Program.

What is the Estate Recovery Program?

Through the Estate Recovery Program the state seeks repayment of Wisconsin Chronic Disease Program (WCDP) benefits provided to recipients. Recovery is made from the estates of recipients or the estates of the spouses of recipients.

Which WCDP recipients are affected by the Estate Recovery Program?

WCDP recipients of any age who die on or after September 1, 1995, may have all benefits recovered that were received on or after that date. Recovery is made by filing claims in estates.

When does the state seek repayment of WCDP benefits?

It is important to remember when thinking about the Estate Recovery Program that the state *may not seek repayment* of any WCDP benefits from a recipient's estate *if the recipient's spouse or minor, disabled, or blind child survives the recipient*. Recovery will be delayed until after the death of the surviving spouse and may be delayed further if there is a surviving minor, disabled, or blind child.

How does the state recover benefits?

The state seeks repayment of benefits by filing claims in *probate estates* to recover services received by WCDP recipients. *Liens* may be filed on homes which are part of a recipient's estate during the probate process.

Probate Estates

An individual's estate includes assets owned by a person at the time of death, including any savings or checking accounts, stocks and personal and real estate owned by the recipient. The legal process known as probate settles an individual's estate by distributing the estate to creditors and heirs and beneficiaries. Creditors file claims against the estate to ensure payment of debt owed them.

The state is generally paid before most creditors. Both the state and other creditors are paid before any assets are distributed to heirs or beneficiaries whether or not there is a will.

There are two ways in which the state recovers benefits through estates. When there is a probate proceeding through a court, the state will file a claim for payment with the court and with the individual handling the estate. When there is not a court proceeding, the state generally recovers benefits by filing a claim for payment with the individual handling the estate using a statutory probate procedure called Transfer by Affidavit.

How and when will a claim in an estate be paid?

The state's claim will generally be paid by the personal representative of the estate according to standard probate procedures. The state's claim is paid after certain other expenses are paid. Costs that are paid prior to the state's claim are funeral costs, costs of administering the estate, attorney fees and costs of the last illness, if any that were not paid by WCDP. If there are not enough assets in the estate to pay the state's claim, the state is paid what is available and the recovery is ended. This applies to both claims in court probate proceedings and to the state's recoveries using affidavits.

Are there situations when the state's estate claim will not be paid or payment will be delayed?

Yes, the state's claim will not be paid if there is a surviving spouse, a disabled or blind child or a child under age 21. Spouses and minor, disabled, and blind children are completely immune from recovery for as long as they live.

However, if there is a surviving spouse, a disabled or blind child or a child under age 21 *and* there is an ownership interest in a home in the estate, the court will place a lien on the home on behalf of the state. A lien obtained during probate will not be required to be paid as long as there is a surviving spouse, a child under 21 or a disabled or blind child regardless of whether the property is sold.

Are there any exemptions if recovery would cause a hardship to an heir or beneficiary?

Yes, the Department of Health and Social Services has set standards by rule for determining whether the state's recovery would result in an undue hardship for an heir or beneficiary. *In estates for persons who die on or after September 1, 1995*, an heir or beneficiary may apply for a waiver of the state's claim on their portion of the estate for one of the following reasons:

- ❑ The heir or beneficiary would become or remain eligible for supplemental security income (SSI), food stamps, or Medicaid if the Department pursued its claim;
- ❑ The deceased's estate contains real estate that is used as part of the heir or beneficiary's business, which may be, but is not limited to, a working farm, and recovery by the department would affect the property and would result in the heir or beneficiary losing his or her means of livelihood; *or*,
- ❑ The heir or beneficiary is receiving general relief, relief to needy Indian persons (RNIP) or veterans benefits based on need under s.45.351(1), Wis. Stats.

The heir or beneficiary handling the estate will be notified of these rights when the estate is being probated through a court or through an affidavit process. That individual is responsible for notifying the remaining heirs and beneficiaries of these rights. An heir or beneficiary can apply to the Department for a waiver as to his or her portion of the estate.

Claims in Probate Court Proceedings

How does the state file a claim in a probate proceeding in a court?

When an estate is being probated using a court proceeding, the personal representative or attorney handling the estate is required to notify the Department of Health and Social Services of the estate and of the time period in which a claim may be filed. The Department then calculates the amount of its claim and submits a copy of the claim to both the court and to the personal representative or the attorney.

Recovery Through Transfers by Affidavit

What is the Transfer by Affidavit process?

This is a process that can be used to close a person's estate when the deceased has less than \$20,000 in case assets and no real estate. It is an alternative to using a court process for very small estates. If this process may legally be used, an heir or the Department of Health and Social Services may collect a deceased's assets by submitting an affidavit to the person or institution possessing the deceased's assets.

When can the state recover WCDP benefits by use of an affidavit?

The state can recover benefits by use of an affidavit if:

- ❑ The recipient has no surviving spouse or minor, disabled or blind child;
- ❑ The deceased has no property other than \$20,000 or less in case assets after burial costs are paid; *and*
- ❑ 20 days have passed since death and no one has petitioned the court to probate the deceased's estate.

How does the state recover WCDP benefits by use of an affidavit?

If the above listed conditions are met, the Department will submit an affidavit to any person (institution or individual, *including an heir*) possessing funds of the deceased stating a claim to the funds. The affidavit includes the Department's claim against the estate. The person possessing the funds must pay all available funds to the Department upon receipt of an affidavit. As stated above, the person handling the estate may pay funeral costs, costs of administering the estate and attorney fees from the estate prior to paying the state. Upon transferring all remaining funds to the Department, the person is released from an obligation to other creditors or heirs of the deceased.

What if I have questions about WCDP or the Estate Recovery Program?

If you have any questions about the Estate Recovery Program, please call 608-264-6755. If you have questions about the Wisconsin Chronic Disease Program, please call 608-221-3701.